

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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REY CARTAS VELASQUEZ, ISAIAS
GARCIA MATIAS, AUSENCIO DE LA
RODAS, DANIEL FILADELFO PEREZ
ORDONEZ, VICTOR JIMENEZ
HERNANDEZ, ELOY GOMEZ JIMENEZ,
MODESTO GOMEZ JIMENEZ,
BONIFACIO JIMENEZ JIMENEZ,
BARTOLO LOPEZ JIMENEZ,
CATALINO JIMENEZ LOPEZ,
CELESTINO JIMENEZ HERNANDEZ,
NIRMAL CHAND, EDGAR CARASCO DE
LOS SANTOS, DAVID CRUZ
GUTIERREZ and AMABILIO SANTISO
MORALES, individuals, Acting
for Their Own and For the
Interests of the General
Public,

Plaintiffs,

v.

MOHAMMED KHAN, aka MOHAMMED
NAWAZ KHAN, aka MOHAMMAD KHAN
an Individual dba KHAN LABOR
CONTRACTOR; HARBANS BATH;
BALWINDER K. BRAR, RASHPAL S.
PANU, HARBANS K. PANU; and
RAMINDER K. BAINS,

Defendants.

NO. CIV. S 01-0246 MCE DAD

**ORDER GRANTING ATTORNEYS' FEES
AND LITIGATION EXPENSES**

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2 After all appearing defendants in this action, except for
3 Defendant Harbans Bath, either settled or agreed to a stipulated
4 judgment, the case proceeded to a court trial against
5 Defendant Bath on June 20, 2005. No appearance was made on
6 behalf of Defendant Bath at trial, and pursuant to Findings
7 and Fact and Conclusions of Law filed July 11, 2005,
8 judgment against Bath in the amount of \$52,923.23 was
9 rendered in favor of Plaintiffs Victor Jimenez Hernandez,
10 Eloy Gomez Jimenez, Modesto Gomez Jimenez, Bonifacio
11 Jimenez, Celestino Jimenez Hernandez, and Rey Cartas
12 Velasquez ("Plaintiffs"). Plaintiffs now move for
13 attorneys' fees and litigation expenses against Bath
14 pursuant to California Labor Code §§ 218.5 and 1194(a), as
15 well as California Code of Civil Procedure § 1021.5. That
16 motion has not been opposed.

17 Although the above-enumerated statutes do
18 unquestionably entitle Plaintiffs, as the prevailing party
19 in this litigation, to attorneys' fees, the amount of those
20 fees is limited by the cited California Labor Code sections
21 to a "reasonable" amount. Further, under Code of Civil
22 Procedure § 1021.5, California's private attorney general
23 statute, the court has broad discretion to determine the
24 amount of a *reasonable* fee award. See In re Gorina, 296
25 B.R. 23 (C.D. Cal. 2002); Gregory v. State Bd. Of Control,
26 73 Cal. App. 4th 584 (1999).

27 To determine a reasonable fee award, courts typically use
28 the "lodestar" method for calculating attorney's fees. Under the

1 lodestar method, a court multiplies the number of hours the
2 prevailing attorneys reasonably expended on the litigation by a
3 reasonable hourly rate. See Hensley v. Eckerhart, 461 U.S. 424,
4 433, 103 S. Ct. 1933, 1939, 76 L. Ed. 2d 40 (1983); see also
5 Ketchum v. Moses, 24 Cal. 4th 1122, 1132, 104 Cal. Rptr. 2d 377,
6 384 (2001) (expressly approving the use of prevailing hourly rates
7 as a basis for the lodestar). Courts may then adjust the
8 lodestar to reflect other particular aspects of a case. See Kerr
9 v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975);
10 see also Serrano v. Priest, 20 Cal. 3d 25, 141 Cal. Rptr. 315
11 (1977). When deciding whether to adjust the lodestar, courts
12 often use the following twelve factors:

13 (1) the time and labor required, (2) the novelty and
14 difficulty of the questions involved, (3) the skill
15 requisite to perform the legal service properly, (4) the
16 preclusion of other employment by the attorney due to
17 acceptance of the case, (5) the customary fee, (6) whether
18 the fee is fixed or contingent, (7) time limitations imposed
19 by the client or the circumstances, (8) the amount involved
20 and the results obtained, (9) the experience, reputation,
21 and ability of the attorneys, (10) the 'undesirability' of
22 the case, (11) the nature and length of the professional
23 relationship with the client, and (12) awards in similar
24 cases.

25 Kerr, 526 F.2d at 69-70.

26 In calculating the initial lodestar figure, the Court
27 first turns to the number of hours billed. Because this
28 motion is unopposed, and because Plaintiffs' counsel has
submitted detailed documentation to support the hours
billed, the Court accepts the hours claimed, which include
560.7 hours of attorney time and another 471.25 hours in
staff time. That does not end the inquiry, because the

1 Court must next address the reasonableness of the claimed
2 hourly rate, which is at two different levels for the five
3 attorneys who participated in this case on behalf of
4 Plaintiffs, and which also includes a separate rate for
5 paralegal/law clerk hours expended.

6 Courts generally calculate reasonable hourly rates according
7 to the prevailing market rates in the relevant legal community.
8 Blum v. Stenson, 465 U.S. 886, 895, 104 S. Ct. 1541, 79 L. Ed. 2d
9 891 (1984). The general rule is that courts use the rates of
10 attorneys practicing in the forum district, here, the Eastern
11 District of California located in Sacramento, California. Gates
12 v. Deukmejian, 987 F.2d 1392, 1405 (9th Cir. 1993); Davis v.
13 Mason County, 927 F.2d 1473, 1488 (9th Cir. 1991), cert. denied,
14 502 U.S. 899, 112 S. Ct. 275, 116 L. Ed. 2d 227 (1991).

15 The burden is on the fee applicant to produce satisfactory
16 evidence that the requested rates are "in line with those
17 prevailing in the community for similar services by lawyers of
18 reasonably comparable skill, experience and reputation." Blum,
19 465 U.S. at 895 n.11. A court will normally deem a rate
20 determined in this way to be reasonable. Id.

21 The rate claimed by Plaintiffs for hours charged by
22 attorney Mark Talamantes, who has eight years' experience
23 representing low-income and immigrant workers (Plaintiffs'
24 Points and Authorities, 3:21-23) is \$350/hour. An hourly
25 rate of \$350 is also sought for Julia Montgomery, who has
26 experience similar to that of Mr. Talamantes. \$250/hour is
27 requested for the other three attorneys who participated in
28

1 this case on behalf of Plaintiffs (Jennifer Ambacher, Daniel
2 Torres and Jennifer Reisch), although all three of those
3 individuals have been lawyers for less than three years.
4 Finally, time spent by paralegal Juanita Ontiveros and law
5 clerk Luis Alejo, which has also been deemed compensable
6 (see Guinn v. Dotson, 23 Cal. App. 4th 262, 267-70 (1994))
7 is claimed at a rate of \$100/hour.

8 In support of the rates claimed, Plaintiffs have
9 submitted several declarations. In his declaration,
10 Plaintiffs' attorney Mark Talamantes¹ identifies two out-of-
11 district cases as a result of which he was awarded fees at
12 the rate here requested of \$350/hour. Because fees should
13 be awarded based on the prevailing rates in this district,
14 however (Deukmejian, 987 F.2d at 1405), any rates awarded by
15 the Central or Northern Districts of California are not
16 germane to a fee entitlement here in the Eastern District of
17 California.

18 Aside from the Talamantes Declaration, the only other
19 Declaration submitted by a Sacramento attorney² is from
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21
22 ¹As far as can be ascertained from Plaintiffs' papers, all
23 of the attorneys and staff who worked on this case on Plaintiffs'
24 behalf, including Mr. Talamantes, are affiliated with the
California Rural Legal Assistance Foundation, whose offices are
here in Sacramento.

25 ²While Plaintiffs do submit a lengthy declaration from
26 Richard Pearl, a sole practitioner in the San Francisco Bay Area,
27 he cites no fee awards arising within the Eastern District
28 further does not identify any law firm hourly rates as stemming
from the Sacramento region. While Mr. Pearl claims generally to
"have some familiarity with Sacramento rates", and goes on to
conclude that the rates claimed here "seem to be within the range
(continued...)

1 Jason Rabinowitz. Mr. Rabinowitz, whose eight years of
2 experience is similar to that of Mr. Talamantes, states that
3 his current billing rate for individual employment cases is
4 \$300/hour. (Rabinowitz Decl., ¶ 8). He goes on to state
5 that billing rates at his firm for such work range from \$250
6 to \$350 per hour, and believes that market rates in
7 Sacramento range from \$250 to \$375 per hour for attorney
8 time. In addition, while Rabinowitz claims that paralegal
9 rates range between \$95.00 and \$110.00, he states nothing
10 about compensable rates for a student law clerk like Mr.
11 Alejo.

12 On the basis of the Rabinowitz Declaration, Plaintiffs
13 have not established entitlement to attorneys' fees in
14 excess of \$300/hour for time expended by either Mark
15 Talamantes or Julia Montgomery. In addition, because the
16 Court's own experience leads it to conclude that compensable
17 rates for that work should not exceed \$300/hour in this
18 district, Plaintiffs' fee recovery shall be limited
19 accordingly.³ Moreover, given the fact that the other
20 three attorneys working on this case (Daniel Torres,
21 Jennifer Reisch and Jennifer Ambacher) all have been
22 practicing lawyers for less than three years, the Court
23

24 ²(...continued)
25 of rates charged for comparable work by comparably qualified
26 Sacramento attorneys", he otherwise provides no evidence in
support of those propositions.

27 ³With respect to Mark Talamantes, the actual time documented
28 is for 444.7 hours rather than 445, as requested in Plaintiffs'
Memorandum of Points and Authorities. The reimbursement amount
has been adjusted to reflect that time discrepancy.

1 believes that the amount requested by Plaintiffs for their
2 services, at \$250/hour, is excessive. \$200/hour will
3 instead be allowed as to both Mr. Torres and Mr. Reisch.
4 The claim for Jennifer Ambacher's fees is denied at this
5 time, without prejudice, because the documentation to
6 support that claim is insufficient.⁴

7 With respect to compensation for legal staff
8 expenditures, Juanita Ontiveros' paralegal services at the
9 rate of \$100/hour are awarded as requested. Plaintiffs have
10 presented no evidence to support an allowable rate of
11 \$100/hour for time expended by a student law clerk (Luis
12 Alejo), however, and compensation for that time will be
13 established at \$50/hour.

14 Multiplying the hourly rates permitted by the court by
15 the total time expended by Plaintiffs' attorneys and office
16 staff yields a total lodestar figure of \$192,555.00.

19 ⁴First, Plaintiffs' Points and Authorities refer to 57.4
20 hours spent by Ms. Ambacher at a claimed rate of \$250/hour. That
21 computation does not yield the total amount sought for Ambacher
22 (at \$10,292.50). Examination of Ms. Ambacher's time records, as
23 attached to the Declaration of Julia Montgomery, in fact refer to
24 some of the claimed time billed at \$100/hour. The Montgomery
25 Declaration, at ¶ 9, states that Ms. Ambacher began working for
26 the California Rural Legal Assistance Foundation in September of
27 2004, and did not become licensed as an attorney until February
28 of 2005. The Court cannot determine absent conjecture in what
capacity Ms. Ambacher worked on this case before February of
2005. In addition, although the Montgomery Declaration refers to
Ms. Ambacher's admission to the bar in February of 2005, at least
one of the entries billed at a lower rate is from that time
period. Finally, no explanation is provided as to why Ms.
Ambacher's bar admission occurred in February of 2005 which is
outside the customary time parameters for bar admission. For all
these reasons, there are too many unresolved issues with respect
to Ms. Ambacher to allow recovery for her time at this juncture.

1 Plaintiffs next asks this Court to apply a 1.2 multiplier to
2 the lodestar figure under FEHA. To the extent that a party seeks
3 a fee enhancement, it bears the burden of proof. Ketchum v.
4 Moses, 24 Cal. 4th 1122, 1138, 104 Cal. Rptr. 2d 377 (2001).
5 Nothing requires a trial court to include a fee enhancement to
6 the basic lodestar figure for contingent risk, exceptional skill,
7 or other factors. See id. Courts simply retain the discretion
8 to do so in the appropriate case. See id.

9 Plaintiffs' argument in support of a fee enhancement in this
10 case is limited to the claim that the California Rural Legal
11 Assistance Foundation, as a non-profit organization with limited
12 resources, took a risk in litigating this case. While that may
13 be true, in the view of this Court nothing otherwise about the
14 case was particularly novel, difficult or complex. Consequently
15 the Court declines to enhance the lodestar amount (as enumerated
16 above) through the multiplier advocated by Plaintiffs.

17 In addition to attorneys' fees, Plaintiffs also request
18 reimbursement for certain expenses in addition to their
19 statutorily recoverable costs. Such expenses may be recouped to
20 the extent they "would normally be charged to a paying client."
21 Harris v. Marhoefer, 24 F.3d 16, 19 (9th Cir. 1994). The Court
22 concludes that the costs claimed herein (\$2,249.12) are
23 reasonable and will be awarded.

24 In sum, for the reasons stated above, Plaintiffs' Motion for
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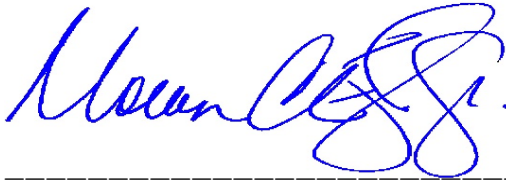
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1 attorneys' fees and litigation expenses is GRANTED, in part.⁵
2 Plaintiffs' reasonable attorney's fees are \$192,555.00 and their
3 reasonable litigation expenses (in addition to any costs
4 recoverable by statute) are \$2,249.12. Those amounts, which
5 total \$194,804.12, shall be paid by Defendant Harbans Bath.

6 IT IS SO ORDERED.

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8 DATED: September 28, 2005
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13 MORRISON C. ENGLAND, JR
14 UNITED STATES DISTRICT JUDGE
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27 ⁵Because oral argument would not be of material assistance,
28 this matter was deemed suitable for decision without oral
argument. E.D. Local Rule 78-230(h).